BOOK REVIEW

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A Review of *Geriatric Psychiatry and the Law*

REFERENCE: Rosner, R. and Schwartz, H. I., *Geriatric Psychiatry and the Law*, Plenum Press, 233 Spring St., New York, NY 10013, 1987, 364 pp., $49.50.

This volume, part of a series derived from annual lectures presented to members of the Tri-State Chapter of the American Academy of Psychiatry and the Law, is divided into six sections: I—Fundamentals, II—Competency and Informed Consent, III—The End of Life, IV—Diagnostic and Clinical Factors, V—Administrative and Social Policy Issues, and VI—Ethnic Considerations: Overcoming Potential Bias. This is the first volume of the series devoted to a common theme and represents an invaluable source book to forensic psychiatrists. The book consists of 21 chapters, and each chapter is worth reviewing when a psychiatrist is confronted with an elderly patient whose case involves any of the specific chapters.

The book does not lend itself to a reading as a whole for several reasons: (1) the chapters stand by themselves as articles that could be published in a journal, hence, (2) there is overload and considerable redundancy (for instance, "Informed Consent," "Incompetence," and "Incompetency"). (This is, in part, due to the very fine grain with which the topics were assigned to the authors, restricting them to more or less significant topics.)

As with journal articles written by different authors, there is considerable variability in the quality and usefulness of the various chapters. This reviewer would recommend to everyone interested in geriatric forensic psychiatry the reading of Fred Charatan's Chapter 1, a learned and philosophical discussion of Geriatric Psychiatry: Consent to Treatment, Research, Witnesses and Wills, Guardianships and Conservatorships, and Death and Dying: The Living Will. These remarks are adumbrations of ensuing chapters and provide a remarkably concise overview for the reader. Charatan notes: "The psychiatrist needs to be sensitive to the possibility of unconscious ageism . . ." (p. 3) and "Sometimes caretakers of the aged defend themselves against this anxiety (the anxiety stimulated by fears about one's own aging) by distancing themselves, by providing mechanistic, impersonal, detached care. They treat the aged with not-so-benign neglect, thereby preserving their own emotional comfort" (p. 3 and 4).

Charatan concludes with this paragraph:

> Our society continues to seek answers from the legal and psychiatric professions in how the last of life should be conducted for competent and incompetent elderly persons. When the laws of our society are in harmony with the ancient laws of Hippocrates and Maimonides, which have guided us so well for so long, we, no less than our geriatric patients, will be the lasting beneficiaries (p. 12).

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If the reader questions: "What if they are not in harmony?", he should read the rest of this interesting volume.

J. Richard Ciccone's and Colleen D. Clements' Chapter 3, The Elderly, Incompetence, and Treatment Decisions: The New York Experience, should be read by all forensic psychiatrists. The emphasis is on treatment decisions and there is a wealth of case examples and advice for the experienced and less experienced forensic psychiatrist on what to do when the law does not conform to the codes of Hippocrates and Maimonides. Case law is quoted and the principles of autonomy and "the common good" *(parens patriae)* are discussed as a continuum, rather than a simple dichotomy. The brief descriptions of Judicial Mechanisms, Statute Law, and Ethical Considerations are remarkable for their concise distillation of complicated topics. All psychiatrists would be well advised to read pp. 43-46 of this volume.

In Chapter 5, Psychiatric Assessment of Competence to Choose to Die: Proposed Criteria, Dr. Richard Rosner describes and illustrates with well chosen, succinct case summaries the four main areas he considers as issues of competence to choose to die:

> (a) Patient decisions regarding whether to authorize extraordinary treatments, so-called heroic therapy regarding their condition. (b) Patient decisions regarding charted "do not resuscitate" orders, that is, orders directing the medical staff not to use cardiopulmonary resuscitation in the events of a cardiac arrest. (c) Patient decisions to authorize physicians to use whatever level of narcotic-sedative medications may be necessary to control the patient's pain, with the understanding that the administration of such large doses of medications may prematurely hasten the patient's demise. (d) Patient decisions to seek discharge from the hospital against medical advice with the understanding that they will go home to die in a familiar setting, rather than to be subjected to the loneliness and pain of inefficacious treatment in a hospital or nursing home (p. 81).

These are aptly illustrated in brief case abstracts.

Dr. Rosner then refers to some landmark cases, with quotations from the judges' opinions and advises the forensic psychiatrist to employ a four-step process by posing the following questions: (p. 85)

1. What is the psychiatric-legal issue?
2. What are the criteria used to determine the specific issue?
3. What are the relevant clinical data?
4. What is the reasoning process that underlies the psychiatric-legal opinion?

The chapter concludes with a discussion of some of the problems of criteria and recommendations for dealing with these problems, a thoughtful and extremely useful section (pp. 85-89).

The overview chapter, Biological and Clinical Considerations in Geriatric Medicine by Michael L. Freedman, is valuable for its discussion of physiological aging, dementia, both reversible (15 to 20%), senile dementia of the Alzheimer type (SDAT), and rarer etiologies. Dr. Freedman gives an excellent discussion of both acute and chronic incontinences, their causes, and treatment.

Another chapter that discusses succinctly some of the issues to which whole other chapters were devoted is Chapter 13, Administrative and Forensic Considerations in the Operation of a Geriatric Psychiatry Service, by Harvey Bluestone, Sheldon Travin, and Michael Kaufman. The authors review the history of the aged in previous societies and note that:

> . . . the doctor-patient relationship in Western medicine has gone through an age of paternalism and autonomy, and is now in an age of bureaucratic parsimony. In this new system, decision making will not remain exclusively between doctor and patient, but will be based on institutional and societal efficiencies and cost concerns. Inevitability, medical resource allocation and resource rationing will play an increasingly important role in geriatric decision making (p. 207).

The 1980 census computed 25.5 million people over 65, over 11% of the total population

and with a rate of increase of 15% (40% in the over 85 group). Senile dementia, suicide, and late onset alcoholism are escalating rapidly.

The elderly underutilize community mental health and private psychiatric services, partly because of Medicare and other third-party insurers provide little economic assistance for psychiatric sessions, and, partly, because of the elderly's fear about mental illnesses and mental health professionals.

Bluestone et al. discuss psychiatric hospitalization for the elderly—frequently more destructive than providing community services—particularly for the senile dementia patients. Generally, the greatest therapeutic responses in the hospital treatment of geropsychiatric patients occurs in the first three weeks and those patients who need extended hospitalization tend to stabilize at a lower level of functioning or even to deteriorate. A community follow-up program is strongly recommended.

Legal issues are similar to those in a general psychiatric unit: refusal to take medication, informed consent, and so forth. The authors also discuss the importance of geropsychiatric liaison in the general hospital and what they term relocation and transfer trauma. Nursing homes and hospices are also described. Both involve do not resuscitate (DNR) problems, differing little from previous chapters' examination of such problems.

This reviewer also found Chapter 14, Abuse of the Elderly: An Overview of the Problem and Solutions, by Jordan I. Kosberg, to be enlightening. The author points out that: " . . . whereas the 1960s were called the decade of child abuse and the 1970s the decade of spouse abuse, the 1980s have been referred to as the decade of elder abuse" (p. 241). As with child and spouse abuse, it is imperative that all mental health professionals be sensitive to the possibility of elder abuse.

Dr. Kosberg discusses under subheadings General Vulnerability (of the elderly), the Extent of the Problem (a study of battered elders found an incidence of 4.1%, or about 1 million cases in each year), Invisibility of the Problem, Explanations, Prevention (Detection, Family Assessment, Family Counseling, and Communitywide Efforts), Protective Services and Mandatory Reporting (used in many states), and Criticism of these Mechanisms (detection is presupposed and there do not exist available resources for treatment).

The author concludes that a comprehensive definition of elder abuse should include: (1) passive neglect; (2) active neglect; (3) verbal, emotional, or psychological abuse; (4) physical abuse; (5) material of financial misappropriations; and (6) violation of rights (pp. 244-245). He also concludes: "It seems clear that elder abuse will continue to exist, as long as ageism and violence remain on the American Scene" (p. 256).

Another thoughtful and provocative chapter is Chapter 15, Divorce and the Elderly, by Larry H. Strasburger and Sue S. Welpton.

> It has been projected that divorce will end nearly half the marriages of today's young adults. . . older persons will be more at risk for divorce in coming years than they used to be. Both the stigma and the stress of divorce appear to be greater among the elderly (p. 259).

"Both the incidence and the prevalence are expected to rise so that by the year 2000 there will be over one million divorced elders" (p. 260). The authors discuss Cases: reversal of roles so that more men become dependent as women become more managerial; Consequences: social, economic, health—Physical and Mental, a good discussion of competency to divorce (pp. 266-267); and Conclusions:

> We have seen that divorce among the elderly is and will continue to be on the increase, exacting a terrible toll from those caught up in it. The subject is much in need of further research and study. To date, clinicians have made a very limited contribution to both the needs of these individuals and the needs of the legal system. It is hoped that by careful elaboration of a new standard of competence, as well as a heightened awareness of the emotional problems that elderly divorced patients face, social workers and forensic psychiatrists may increase their future contributions to this difficult and challenging area.

Jay E. Kantor's Chapter 19, Ethical Considerations in Geriatric Forensic Psychiatry should be read by all physicians, not just forensic psychiatrists interested in geropsychiatry. Kantor's approach is that:

> The forensic psychiatrist working with geriatric cases must begin with training in general psychiatry. I think it is useful to begin on a parallel course with ethics. Thus, I will start by discussing some ethical issues that occur in the general practice of forensic psychiatry and, finally, reach the special geriatric issues (p. 305).

He then contrasts the utilitarian versus the autonomy theories of ethics and applies these to a hypothetical case.

Geriatric Psychiatry and the Law is well conceived and planned. It is certainly timely, as the "graying of America" is statistically validated and projected:

> In 1980, 2.2 million people were 85 years and older, more than double the number in 1960. It is estimated that by the year 2000 there will be 4.9 million people over 85 and about 2030 the figure will go to 8 million. These carry important meanings for nursing homes and their residents. Nearly 25% of the over-85 population are in nursing homes compared with 1.5% of the 65 to 84 age group. About 2.1 million people will be in nursing homes in the year 2000, compared with 1.2 million 5 years ago (p. 279: Stanley R. Kern, Chap. 17).

The book is well edited, with only two errors aside from one poorly proofread chapter with serious misspellings.